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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1934. No. 394

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

v.

JOHN G. WILLIAMS, JOSEPH B. SIMON and CHARLES DENBY, JR., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION,
Respondents.

Brief for Respondents.

(CONTRA PETITION FOR WRIT OF CERTIORARI.)

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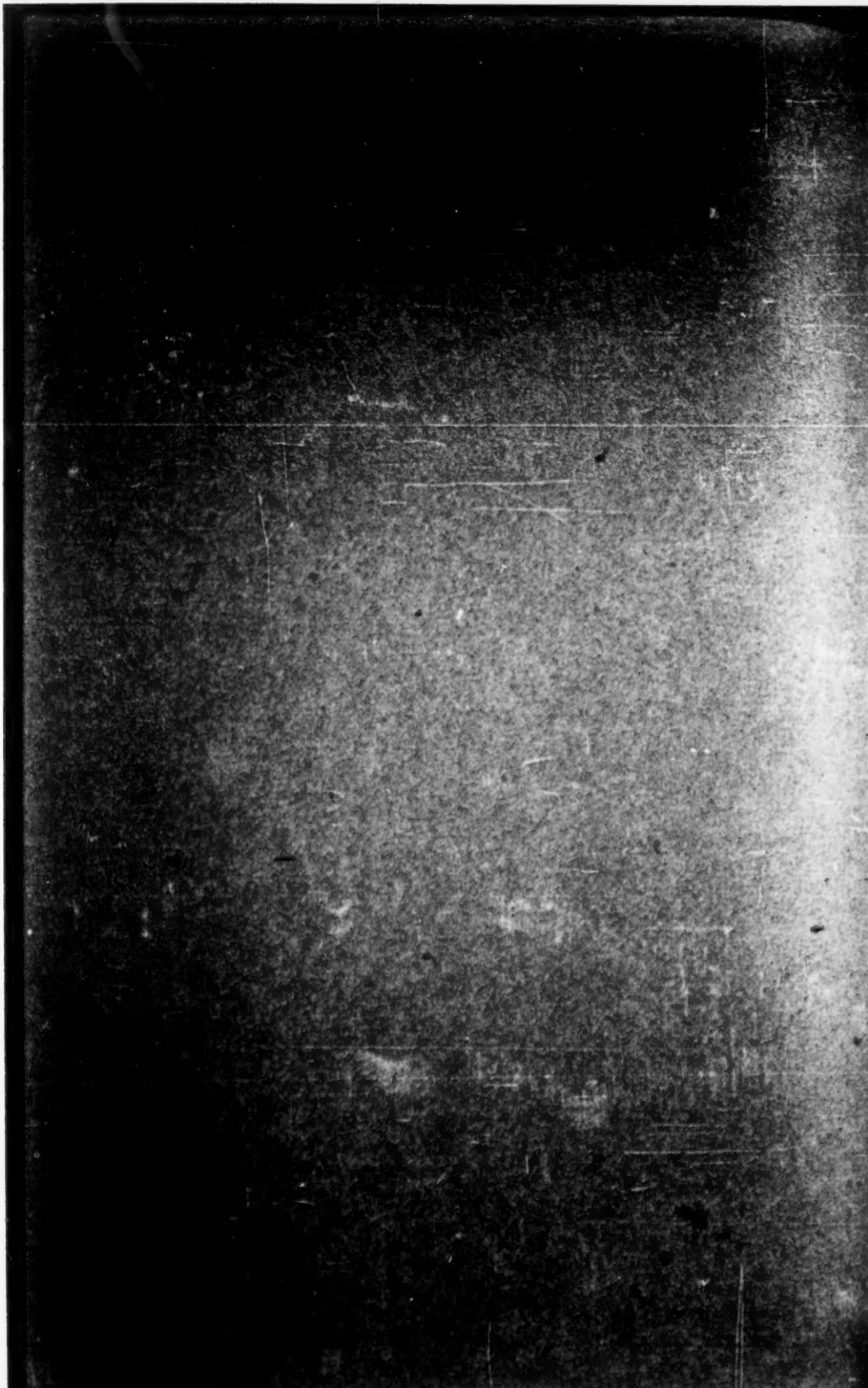

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BRIEF FOR RESPONDENTS.

ARGUMENT.

I.

The Facts.

The facts appearing in the Petition for Writ of Certiorari and in petitioner's Brief in support thereof so distort the facts appearing in the Record, that a succinct but accurate restatement is essential.

Mortgage Building and Loan Association was created on April 7, 1931, by the merger and consolidation of seven associations (R. 32). As early as June 5, 1931, within two months after this merger, the Department of Banking summoned the officers of the association for a hearing before it. At that hearing the Attorney General and the Department found the association to be in an unsafe and unsound condition (R. 32, 42). Thereupon, on the same day, the Secretary of Banking addressed a letter to the president of the association, referring to the hearing and stating:

> "We gave certain instructions as to how the association is to be operated in the future, which instructions we feel if strictly adhered to will be for the best interest of the stockholders and may work out its salvation.
>
> "The instructions are as follows:
>
> [Here follow the instructions or recommendations.]
>
> . . . . . .
>
> "The above instructions are to be strictly adhered to until the association is again examined by this Department, which will be sometime after the first of

the year" (—a period of at least seven months) (R. 42-6).

The Secretary of Banking therefore knew on June 5, 1931, that the association was in an unsafe and unsound condition; he knew for sometime prior to December 6, 1932 (Exhibit "B" of Petition, R. 46-50) that the association was insolvent.

In the face of these facts, the almost total want of reference in petitioner's Brief to the claim of Nice Ball Bearing Company is of striking significance. It is that claim which gave rise to the receivership and was its motivating cause. The Bill of Complaint (Paragraphs 17-19, R. 15-16), as well as the Answer to the Petition, shows that the Secretary of Banking, through his agent, the Chief of the Bureau of Building and Loan Associations, knew that the filing of the Bill of Complaint in this case was imminent and that the solicitor and real estate advisor conferred with the officials of the Department, advising them that liquidation was inevitable and the Department should take possession.

The Record shows that the Bill of Complaint was filed solely because a dissenting shareholder, Nice Ball Bearing Company, had obtained a judgment against the association on May 7, 1932, for $40,044, and that this judgment had been affirmed on appeal on January 16, 1933 by the Supreme Court of Pennsylvania. (Reported as *Nice Ball Bearing Co. v. Mortgage Building and Loan Association*, 310 Pa. 560, 166 A. 239 (1933).)

Nice Ball Bearing Company was threatening and was about to issue execution whereby it would obtain a preference over all other shareholders including the plaintiff, who was also a dissenting shareholder and who had paid in to the association as dues the total sum of $31,200. This preference, so sought to be obtained by Nice Ball Bearing Company, was only to be avoided by the application for

receivers, which was made in this case (R. 57). Once execution had issued in favor of Nice Ball Bearing Company, it would have obtained an unshakable lien on the property levied upon, for the amendment to the bankruptcy law exempts building and loan associations from its operation (Act of February 11, 1932, c. 38, 47 Stat. 47). What would have happened if the receivership had not been effected upon plaintiff's Bill appears from a subsequent proceeding referred to in the Opinion of the Circuit Court of Appeals (R. 111). After the receivership Nice Ball Bearing Company filed a petition seeking to have the receivers turn over to it United States Liberty Bonds in excess of $40,000, which had been placed in escrow by the association at the time of its appeal to the Supreme Court of Pennsylvania from the judgment of Nice Ball Bearing Company. The Circuit Court of Appeals sustained the action of the District Court in refusing a peremptory order to turn over the bonds (see *Nice Ball Bearing Co. v. Williams, et al.*, 66 F. (2d) 881 (1933)).

Accordingly, the Bill of Complaint was filed more than three weeks after the affirmance by the Supreme Court of Pennsylvania of the judgment obtained by Nice Ball Bearing Company. During all this time the state officials took no steps to bring the association under the jurisdiction of the Department of Banking, although they had been requested to do so. Then only was the Bill of Complaint filed.

Temporary receivers were not appointed without notice of any kind. The decree of the District Judge appointing Temporary Receivers (R. 20) itself recites:

> "Notice of said application having been given to the attorney for the Mortgage Building and Loan Association, and Joseph H. Sundheim, Esq., appearing and not objecting to said appointment of Temporary Receivers. . . ."

It is conceded that the Bill was filed, the receivers appointed and all the property of the association taken into their actual custody before the Secretary of Banking held his hearing preliminary to the filing of his certificate of possession.

Some improper inference is sought to be created with respect to the identity of one of the receivers and one of counsel (Petitioner's Brief, p. 19). The receiver named, Mr. Williams, had been designated by the association as real estate officer pursuant to the letter of the Department of June 5, 1931, which required approval by the Department of such choice. No assertion has ever been made to the District Judge appointing the receivers of any disqualification of the officers acting under its decree.

It is true the District Court refused leave to the Commonwealth to intervene and dismissed its Petition, but it is to be noticed that the one Petition went also to the substance of the present proceeding. Indeed, the present proceeding is based upon that Petition. The District Judge and the Circuit Court of Appeals alike refused leave to intervene only because they considered the petitioner as having already intervened and disposed of its Petition upon its merits. As said by the District Judge:

> "Upon consideration of the whole Record, we are of the opinion that no sufficient grounds have been shown to vacate the court's appointment of the receivership, and since this is the only purpose for which the petition to intervene has been filed, the petition filed by the Attorney General is dismissed." (R. 81)

Indeed, petitioner received more than it was entitled to at the hands of both courts. For as pointed out by the District Judge (R. 66), the Commonwealth of Pennsylvania was not the proper party and the Petition should have been brought by Richard Ennis, Special Deputy Secretary of

Banking appointed by the Secretary to take possession of the association. These procedural questions were waived, however, by the receivers, and both courts, as the Opinions show, considered the Petition upon its merits.

It is asserted in petitioner's Brief (p. 20) that the Circuit Court of Appeals "did not recognize any distinction in receivership applications for ordinary commercial corporations and those of a quasi public character." The Opinion of the Circuit Court of Appeals shows precisely the opposite (R. 96-7, 109-10).

II.

The Secretary of Banking Was Not Exercising Jurisdiction Over the Association.

The statute applicable to the present case is the Banking Act of June 15, 1923, P. L. 809 (7 PS., Sections 1, et seq.). The present Department of Banking Code, approved May 15, 1933 (P. L. 565) and effective July 3, 1933, is a codification, restatement and alteration of the law. It was not in force, however, when the present proceedings were taken and hence is inapplicable here. An examination of the statutory law clearly reveals that prior to the Department of Banking Code of 1933 the method prescribed was loose and incomplete; and doubtless the Code and its companion Building and Loan Code of 1933 (P. L. 457), were enacted as a result of the deficiencies in the prior statutes.

The Opinion of the District Judge refers at length to the applicable statutory provisions and they need not be repeated here. It should be pointed out, however, that the Banking Act of 1923, which authorized the Secretary of Banking to take possession of an association for the purpose of liquidation (7 PS., Sections 21-31), and provided that upon such possession he shall supersede a receiver appointed "by any court", refers to a Court of Common

Pleas of the Commonwealth of Pennsylvania (7 PS., Section 2), and not to a federal court.

Petitioner is driven to the anamolous argument that under the statute of Pennsylvania to which it points, the Secretary of Banking could have taken possession of the association as early as June 5, 1931, yet failed to do so until the futile effort made after the appointment of receivers by the federal Court. At the same time it argues that this inactivity and non-exercise of statutory power constitutes an exercise of "full jurisdiction over the liquidation of the association" (Petitioner's Brief, p. 20). From its own Petition it appears that the Secretary of Banking did nothing until October 28, 1932, fifteen months later, when he requested a financial report, and on December 6, 1932, advised the association's officers that it was insolvent. This was all he did other than to suggest a method of operation, to select new counsel and a real estate advisor and to have the directors approve the various actions which he suggested (Petition, paragraphs 10-12, R. 33-4, 46-50).

He never exercised any authority or dominion over the association, never received one of its papers or documents into his possession or put them under his control, but permitted it to function as any other corporation in Pennsylvania and as if it were a solvent association, leaving control entirely in the hands of its officers and directors.

As is well said by the Circuit Judge:

> "The association continued to go along and conduct business on this restricted basis while insolvent or in an unsafe and unsound condition from June 5, 1931, until the Bill in this case was filed, February 9, 1933, when it was admittedly insolvent, with the interests of all persons who dealt with it or who were connected with it, in jeopardy" (R. 111).

What the Secretary should have done, and what alone would have constituted "full jurisdiction" over the liquidation of the association, was to take possession both because it was unsafe and unsound and because it was insolvent.

Much emphasis is placed upon the suggestions, letters or so-called orders from the Secretary of Banking. As shown by the District Judge, they constitute mere admonitions and do not rise to the dignity of restraining orders. In fact they have no legal force except that their compliance may create an attitude of good-will, causing the Secretary of Banking to refrain from the exercise of his legal powers. This principle has been recognized in Pennsylvania. In *Blattenberger v. Sharswood Bldg. & Loan Assn.*, 19 Pa. D. & C. 447 (1933), the Department of Banking notified the association as to the manner in which it should conduct its business and placed it under "temporary restrictions" under which, inter alia, it was to pay no withdrawals and declare no maturities. The court held these letters merely directory and not binding, saying:

> "Section 20 of The Banking Act of June 15, 1923, P. L. 809, provided that 'Whenever it shall appear to the secretary that any corporation . . . is conducting business in an . . . unsafe manner, or that any such corporation has an impairment of capital, the secretary may issue an order, under his hand and seal of office, directing such corporation . . . to discontinue . . . such unauthorized or unsafe practices, or directing such corporation to make good, within a time of not more than sixty days after notice by the secretary, any impairment or deficiency of capital'. The letters from the secretary above referred to were not under his 'seal of office'. Indeed, they were not signed by him but by the assistant supervisor. They were not orders but merely requests. The defendant was not

directed 'to make good . . . any impairment or deficiency of capital.' True, that of April 8, 1933, states that 'within sixty days you are to submit to this office a plan for rehabilitation of your affairs', but submitting such a plan is not making good an 'impairment or deficiency of capital'. The letters referred to no 'unauthorized or unsafe practices', but to the regular and proper acts of a building and loan association in the conduct of its business. Upon these the secretary was attempting to place 'temporary restrictions'. Under section 808 of the Building and Loan Code of May 5, 1933, P. L. 457, he now may do so by issuing an 'order of segregation', but no such authority was vested in him prior to July 3, 1933, when that act became effective. It is therefore apparent that the letters had no legal significance, and that defendant should have credited plaintiff's payments on account of his shares of stock to the cancellation of his loan."

The letters in this case are similar in form and were equally unauthorized in law.

Had the Secretary been exercising full jurisdiction over the association, there would have been no power in the Nice Ball Bearing Company to proceed with execution (7 PS., Secs. 29, 36) and there would accordingly have been no need for the filing of the present Bill. It may be, as petitioner argues (Brief, p. 21), that "nowhere in the Bill of Complaint is it charged that the Secretary of Banking was guilty of neglect or delay in performing his duty." The answer to this assertion, however, is that the admitted facts proclaim his neglect. The Secretary's own Petition reveals inactivity over a long period of time, rendering possible the consummation of the threatened attachment by Nice Ball Bearing Company and an unwillingness to meet this threat which was only frustrated by the filing of the Bill.

III.

The District Court Had Jurisdiction to Appoint Receivers to Liquidate the Association.

It is argued by petitioner that the District Court is without jurisdiction to appoint receivers to liquidate a building and loan association. This argument, which is but feebly pressed here, is fully answered in the Opinions of the District Judge (R. 66-73) and the Circuit Court of Appeals (R. 92-110). It would serve no useful purpose to reiterate what is so thoroughly and convincingly shown in these Opinions.

A fresh error appears, however, in the Petitioner's Brief (p. 24). It is there said that if the Bill had been filed in a Pennsylvania Court "only the Secretary could be made receiver. (Section 22 of the Act of 1923)." *This is not so.* The courts of Pennsylvania had complete power to make unrestricted choice of receivers; the only limitation thereon was the subsequent one that the Secretary of Banking might, on account of the appointment of a receiver, or for any other cause mentioned in the statutes, take possession of the association, and upon so doing, *superseded the receiver appointed by the state court* (7 PS., Section 21.). This was the law in existence at the time the present proceedings arose. It has recently been changed by the Department of Banking Code of 1933, Sec. 606, which provides:

> "No court shall appoint anyone but the Secretary [of Banking] as receiver of an institution. Whenever any court . . . shall determine that a receiver should be appointed . . . it shall appoint the Secretary as such receiver."

It is erroneously argued that the two courts which have already passed upon this case adversely to the peti-

tioner, failed to consider its argument that jurisdiction to appoint receivers does not attach where the subject of the receivership is a quasi public corporation. A reading of the Opinions reveals that they are chiefly concerned with this argument and that contrary to petitioner's assertion, judicial authority exists in which it has been ruled that the *jurisdiction* of federal Courts over quasi public institutions is not ousted or limited.

Indeed, the Opinion of the Circuit Court of Appeals reveals that petitioner there conceded that the court had jurisdiction, and limited its attack to the exercise of jurisdiction as an abuse of discretion. Judge Davis said:

> "The Attorney General . . . virtually admits that the District Court did have jurisdiction, but ought not to have exercised it, for he says, 'We are urging not that the District Court was technically without jurisdiction, but that it ought not to have exercised its jurisdiction' " (R. 110).

IV.

THE FEDERAL COURT WAS COMPELLED TO EXERCISE JURISDICTION TO LIQUIDATE THE ASSOCIATION.

Petitioner argues that even if the District Court had jurisdiction to appoint the receivers, it would have been an abuse of discretion to do so "*under the circumstances*". This argument, however, becomes indistinct, for it merges in the argument that federal Courts must, in deference to State statutes, decline to take control of quasi public institutions. This raises the question of *jurisdiction* rather than *discretion*. The former has already been considered.

Accordingly, we shall here restrict ourselves to the question of discretion. The circumstances already recited

make it evident that it would rather have been an abuse of discretion if the District Judge had refused to appoint receivers. Under the unusual circumstances present in this case, the assertion that it was an abuse of discretion to appoint receivers is so extreme that to accept it as sound would be in effect to hold that there is no jurisdiction in any case to appoint receivers. It may therefore be understood why petitioner's argument on discretion is so indistinct from its argument on power. No stronger appeal to the discretion of a court could be made than that presented by the plaintiff in this case. He appealed to the District Court under the Federal Constitution to extend to him as a resident of New York its power of supervising and liquidating a Pennsylvania corporation through the instrumentality of a receivership in order to save the corporation in which he had a large financial interest from imminent destruction which the State authorities had long indicated they would not act to prevent.

Without further discussion, we submit that it is clear that petitioner cannot carry the heavy burden of showing a clear abuse of discretion, yet such is the burden upon it. In *Milwaukee and Minnesota Railroad Co. v. Howard*, 131 U. S. Appdx. lxxxl, (1866), this Court said:

> "The removal or appointment of a receiver, as we have heretofore said, rests in the sound discretion of the Court *and is not reviewable here.*"

In *Kingsport Press, Inc. v. Brief English Systems, Inc.*, 54 F. (2d) 497 (1931), (certiorari denied, *Owen v. Kingsport Press*, 286 U. S. 545, 1932), the facts were so similar to those in the present case, that we set them forth at some length. The United States District Court for the Southern District of New York appointed an equity receiver of the defendant. Thereupon a creditor of the de-

fendant, who prior to the receivership had obtained a judgment and had allowed an appeal to be taken without the entry of security on the assurance of the defendant's then counsel that it was solvent, presented a petition to vacate the appointment of the receiver. The petitioner objected that the plaintiff's claim had not been reduced to judgment, that the suit was collusive and that its sole purpose was to prevent execution by petitioner.

On appeal Augustus N. Hand, of the Circuit Court of Appeals for the Second Circuit, after considering *Harkins v. Brundage,* 276 U. S. 36 (1928), cited by appellant as requiring the plaintiff to be a judgment creditor, said:

> "In most cases the estate can and should properly be administered in bankruptcy . . . In other words, we assume that the above dictum [in the Harkins Case] did not mean to prescribe the appointment of a receiver in equity for a railroad (which would not be subject to the Bankruptcy Act [11 U. S. C. A.]) or even for an industrial corporation, where it was made to appear that the corporation was likely to pay its creditors in full and to preserve its business through administration by a receiver, whereas the interests of general creditors would be greatly injured or destroyed if a single creditor were allowed to proceed with execution . . . Nor was the complainant here a mere dummy acting without risk of expense. On the contrary, it acted on its own behalf and through its regular attorneys and was vitally interested in not having the assets seized on execution by a judgment creditor who would get his claim paid in full while other creditors might have to go begging. In such circumstances, there can be no reason for holding that the judge abused his discretion in appointing a receiver or that the complainant was guilty of any fraud upon the judgment creditor, Owen, or upon the

court. The judge, on the facts presented, adopted the only course that seemed to give the creditors of the defendant a chance to be paid in full or, even if they should not be paid in full, to be treated equally. . . . We should not interfere with the exercise of that discretion in the absence of proof of abuse. Sage v. Memphis, etc., Railroad Co., 125 U. S. 361, 8 S. Ct. 887, 31 L. Ed. 694; Folk v. United States (C. C. A.) 233 F. 177; Ward v. Central Trust Co. of Illinois (C. C. A. 252 F. 127; City Bond & Finance, Inc., v. Grant (C. C. A.) 30 F. (2d) 671.

• • • • • • • • •

The contention that the appointment was obtained by collusion is based on a confusion of ideas. It seems to be thought that it was illegal for the defendant to inform the complainant that Owen was ready to issue execution or to take any steps that would facilitate a receivership. We can discover nothing illegal in this. Owen had no vested right to prevent other creditors from being paid if an administration of the property of the defendant through an equity receivership would produce such a result though after some inconvenience and delay to himself."

In *First National Bank of San Francisco v. Detroit Trust Co.*, (C. C. A. 9th) 248 Fed. 16 (1918), it was said:

"It is to be observed that an appellate court will not reverse such an order as that which is here appealed from [the appointment of a receiver and authority to continue the business] unless it appears that the discretionary power of the court 'has been so improvidently and improperly exercised as to bring its action clearly within the meaning of the term "abuse of power".' Heinze v. Butte & Boston Consolidated Min. Co., 126 Fed. 1, 11, 61 C. C. A. 63, 73; United

States Shipbuilding Co. v. Conklin, 126 Fed. 132, 60 C. C. A. 680; Briggs v. Neal, 120 Fed. 224, 56 C. C. A. 572."

This is the law in Pennsylvania.

In *Franklin National Bank v. Kennerly Coal & Coke Co.*, 300 Pa. 479, 150 A. 902 (1930), the Court states:

> "The appointment of a receiver is a discretionary matter with the court below, and its action will not be disturbed unless there is a clear abuse of sound judicial discretion."

As a matter of law, such an appointment was not appealable in the federal Courts until the passage of the Act of April 14, 1906, 34 Stat. at L. 116 (now contained in Sec. 129 of the Judicial Code, 28 U. S. C. A. Sec. 227). See *Loveland's Appellate Federal Jurisdiction*, Secs. 187, 193.

It is further argued that federal Courts, in deference to State statutes, have in the past and presumably should now decline to take control of quasi public institutions. The Opinion of Judge Welsh has set forth an imposing list of cases in which federal Courts have appointed receivers for building and loan associations (R. 71-2). Petitioner cites a number of cases, but they have all been so carefully considered by the District Judge and the Circuit Court of Appeals and shown to be so clearly inapplicable to the present case that to avoid repetition we refer to the discussion of the cases in the two Opinions. Most of these cases were cited in the Opinion of the Pennsylvania Supreme Court in *Commonwealth v. Penn General Casualty Company* (not yet reported). That Opinion and its erroneous reliance upon these cases is thoroughly discussed in the Opinion of the Circuit Court of Appeals (R. 99-109). As pointed out by Judge Davis, the Pennsylvania Supreme Court did not refer to *Mitchell v. Maurer*, 69 F. (2d) 233

(1934), where the Insurance Commissioner of California sought to supersede federal receivers of an insurance company. It was there held that since the federal receivers had taken possession of the res before the Insurance Commissioner had brought his proceeding, the federal receivership must continue.

Petitioner has added the case of *Amos v. Trust Company of Florida,* 54 F. (2d) 286 (1931). In that case the Court pointed out that under the facts there existing, the federal Court, as a matter of discretion, should not have appointed receivers. Again, the receivership granted was not of the assets of the company but of only a certain portion of its business which, however, would destroy the remaining business of the company. Hence, it was an abuse of discretion to invoke a receivership which in effect destroyed the remaining business of the trust company.

Petitioner does not refer to *Jones v. Lincoln Savings & Trust Co.,* 222 Pa. 325, 71 A. 209 (1908). In that case a receiver of a trust company was appointed on a shareholders' bill in the Common Pleas Court of Philadelphia County. Thereafter at the instance of the Attorney General under a bill for dissolution under the Act of February 11, 1895, P. L. 4, a receiver was appointed in the Dauphin County Court. The Attorney General sought to have this receiver supersede the receiver appointed on the stockholders' bill. The refusal of this prayer was affirmed by the Supreme Court of Pennsylvania. It probably was in consequence of this case that the Act of April 23, 1909, P. L. 167, was passed providing that the appointment of a receiver "by any court of this Commonwealth" should be cause for the superseding of that receiver on application by the Attorney General.

V.

CONCLUSION.

It is argued by petitioner that the decision of the Circuit Court of Appeals in effect assists a building and loan association to escape the jurisdiction and laws of the state creating it. This argument comes far too late for it has found organic expression in the Constitution of the United States in cases of diversity of citizenship (Art. III, Sec. 2). Nowhere in the Record can be found a single fact which supports the argument that to permit liquidation of a building and loan association under the jurisdiction of a federal Court will result in the destruction of its assets and the ruin of its shareholders. Surely it would be a novel thing for this Court to judicially notice as true an argument which on its face must prove unsound and a reflection upon the federal Courts. The petitioner, however, should have descended from such a generality to this particular case. The conduct of the state officials can in no way be justified and that unjustifiable conduct alone made necessary and possible the appointment of Federal receivers. The proper method of avoiding federal receivership of a building and loan association is not to destroy a constitutional jurisdiction but for state officials to comply with the laws which they administer. If, under the laws existing when these proceedings arose, the Secretary of Banking had taken possession of unsafe and unsound or insolvent associations there could be no federal receivership. If his neglect of the power conferred upon him has resulted in administration through some other agency, he cannot complain.

The entire fallacy of petitioner's argument rests in its failure to recognize that under the Act of 1923 and similar legislation, the Secretary's power of supervision was not an exercise of possession or jurisdiction over building and loan associations. It is quite probable that

the Building and Loan Code of 1933, which provides for orders of segregation (Section 808) is legislative recognition of the prior error entertained by the Department of Banking. Under the new law the Secretary of Banking is given intermediate jurisdiction over associations, even short of the taking of possession. His orders in such cases may not be, as heretofore, mere words of advice which in practice an insolvent association would feel impelled to follow but which a sound and solvent association might legally defy. If this be true, then such intermediate orders, made in the future, may prevent federal receivership in all such cases because the res will have been already in the possession of the state.

But it is well that non-residents should know that the jurisdiction of federal Courts is still available to them. To use the illustration of a bank or trust company, which petitioner seems to believe is so conclusive in its favor, is there any public policy which should destroy the jurisdiction of federal Courts in a case where the state agency negligently refuses to take possession of a bank or trust company which for almost two years has been insolvent? If the state authorities should for any reason be unwilling for two years to close the doors of an insolvent bank, it is well that federal Courts have the power to intervene and do so themselves.

It comes with ill grace for petitioner to speak of "technically non-resident shareholders" as "mere pawns for professional receivership practitioners". The plaintiff in this case is admittedly a non-resident and had invested $31,200. in the association which the state agencies did not properly protect. Vigilance, activity and performance of duty by the Secretary of Banking would have rendered a federal receivership unnecessary. Such action likewise would not have made it necessary for him to indulge in the impropriety of making assertions outside the Record. Had he taken possession it would have rendered unneces-

sary the exercise of constraint upon the association in the choice of its solicitors and real estate agents by the threat of possession.

It is submitted that this case involves, not high questions of public policy, but a very common illustration of an attempt to alter well established law to justify administrative inactivity and neglect.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1934. No. 394.

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

JOHN G. WILLIAMS, JOSEPH B. SIMON and CHARLES DENBY, JR., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION,
Respondents.

SUPPLEMENTAL MEMORANDUM FOR RESPONDENTS.

Since preparation of the Respondents' Brief in this case, the Supreme Court of the United States on Monday, October 8, 1934, handed down a decision upon Petition for Writ of Certiorari in the case of Mitchell v. Maurer (69 F. (2d) 233 (1934)), in which case the same question was raised and allowing an appeal, limiting it to the question of whether the appointment of an ancillary receiver upon the petition of a domiciliary receiver was proper; in other words, apparently dismissing the appeal on jurisdictional grounds.

In that case it refers to the case of McCandless v. Furlaud (68 F. (2d) 925 (1934)) which is No. 11 on the Argument List and is to be argued today (October 11, 1934). It would seem, therefore, that the question involved in this case was disposed of in that case by not allowing the appeal on the question of jurisdiction.

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